

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI**

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

MFA.No. 1221 of 1996(A)

**(AGAINST THE AWARD IN OPMV.2502/1992 DATED 1/11/1993 ON THE
FILE OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, KOZHIKODE)**
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APPELLANTS: PETITIONERS:

- 1. P.P. INDIRA, AGED 33 YEARS,
W/O.K.C.GOPINATHAN, KALATHIL HOUSE,
KUNDAYITHODU, KOLATHARA P.O., CALICUT.**
- 2. K.C.SREENATH, AGED 12 YEARS,
S/O.K.C.GOPINATHAN, KALATHIL HOUSE,
KUNDAYITHODU, KOLATHARA P.O., CALICUT.**
- 3. K.C.SREEVIDYA, AGED 9 YEARS,
D/O.K.C. GOPINATHAN, KALATHIL HOUSE,
KUNDAYITHODU, KOLATHARA P.O., CALICUT.**
- 4. SMT. K.P.DEVAKI AMMA, AGED 72 YEARS,
W/O.VELYUDHAN MENOKY, KALATHIL HOUSE,
KUNDAYITHODU, KOLATHARA P.O., CALICUT.**

**(APPELLANTS NO.2 AND 3 BEING MINORS ARE REPRESENTED BY
THEIR GUARDIAN AND MOTHER P.P. INDIRA)**

**BY ADV. SRI.THOMAS ANTONY
SRI.K.M.JAMALUDHEEN**

M.F.A.NO.1221/1996

RESPONDENTS: RESPONDENTS:

1. P.K. BASHEER, AGED 34 YEARS,
S/O.MAMMU, MANNODI THAMASIKKUM,
PANICHAMKULANGARA, FEROKE AMSOM, NELLUR DESOM,
KOZHIKODE DISTRICT (DRIVER OF BUS KLL 1440).
2. ALAVIKUTTY, AGE NOT KNOWN, S/O.C.POCKER,
SAMEERA MANZIL, SUPER BAZAR, P.O. PARAMBIL PEEDIKA,
MALAPPURAM DISTRICT (OWNER OF BUS KLL 1440).
3. M/S. ORIENTAL INSURANCE CO.LTD., DIVISIONAL OFFICE,
GENERAL HOSPITAL ROAD, CALICUT – 1.
(INSURER OF THE VEHICLE KLL 1440 NO.BUS)

BY ADV. SRI.MATHEWS JACOB (SR.) for R3
SRI.P.V.KUNHIKRISHNAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 02/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

/TRUE COPY/

P.A.TO JUDGE

KSS

J.B.KOSHY & V.GIRI,JJ.

MFA NO.1221 of 1996

Dated this the 2nd day of August, 2007

JUDGMENT

Koshy,J.

Widow and two children along with the parents of the deceased have approached the Tribunal for compensation for the death of a 42 year old man in a road accident. That accident occurred on 27.5.1992. While he was returning home by bicycle after his duty, a bus driven by the second respondent hit him, as a result of which he suffered severe injuries. He fought for his life for one week and who is succumbed to the injuries on 2.6.1992. The Motor Accidents Claims Tribunal found that the accident occurred due to the negligence of the second respondent driver of the vehicle insured by the third respondent. Only the quantum of compensation is disputed in this appeal. As against a claim of Rs.8 lakhs, only Rs.2,18,500/= was granted as compensation. The deceased was a lineman in the Kerala State Electricity Board. His basic pay and dearness allowance was Rs.3160/=. That is apart from the holiday wages etc. It is the contention of the claimant that being a public sector undertaking, periodical revisions in salary will be there, apart from the above, yearly increment as well as time bound promotion. The future prospects also should be considered while calculating the loss of the dependency. But the Tribunal assessed only

Rs.1,200/= as the monthly dependency. The Salary Certificate was produced before the Tribunal. The original of the above was shown to us which states that on May 1992, one month prior to the accident, his basic allowance is Rs.3535/= apart from the holiday wages of Rs.491/=. It is contended that if he was allowed to retire at the age of 55, he would have got salary, three times higher than the present salary and retiral benefits, pension etc. also would have been calculated on the basis of last pay. His dependents lost everything. He was maintaining a large family. Considering the circumstances, we fix Rs.3300/= as his monthly income. Rs.2200/= as loss of dependency.

2. The second question is what is the multiplier to be taken. It is true that he would have retired after 13 years of his service. But if he lived up to 13 years, he would have got higher retiral benefits and higher pension etc. Apart from the above, he would have got some other employment. The life span is also on increase. However, we are of the opinion that we can take the second schedule for guideline as held by the three member bench of the supreme Court in **Smt.Supe Dei and others v M/s National Insurance Co.Ltd. and another** (JT 2002(Suppl.SC 451) and we can fix 15 as the multiplier. If that be so, compensation payable for loss of dependency is Rs.3,78,000/=. The Tribunal has granted only Rs.1,87,200/=. Balance amount will be Rs.1,90,800/=. Since he was in the hospital for seven days fighting for his life, atleast Rs.10,000/= ought to have awarded for pain and

suffering, but only Rs.2500/= was awarded on that ground. Hence we awarded an additional amount of Rs.7500/= on that head. It is submitted that his wife was very young and he has two minor children also. For loss of consortium to the wife and love and affection to the children together also, Rs.7500/= was awarded. It is very low. But considering the total amount granted, we are not enhancing further compensation. Hence additional compensation payable will be Rs.1,98,300/=. The above shall be deposited by the third respondent Insurance Company with 7 1/2% interest from the date of application till the deposit of the amount. Rs.15,000/= is allowed to be withdrawn by the 4th appellant mother and Rs.50,000/= is allowed to be withdrawn by the first appellant widow. Balance amount with entire interest shall be deposited in a nationalised bank equal proportion in the name of appellants 2 and 3. The second appellant is allowed to withdraw the same at the age of 20 and 3rd appellant is allowed to withdraw the amount at the time of her marriage.

J.B.KOSHY, JUDGE

V.GIRI,JUDGE



MFA No.1221/1996

:4:

J.B.KOSHY, J.

MFA 1221/1996

JUDGMENT

2/8/2007

MFA No.1221/1996

:5: